

# Auditor Assurances 2022/23

## Clinical Negligence and Other Risks Indemnity Scheme



 AUDIT SCOTLAND

Prepared for appointed auditors in the health sector

19 May 2023

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# Introduction

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## Purpose of report

1. The purpose of this report from Audit Scotland's Professional Support is to:
  - provide auditors with assurance on the methodology used by the Scottish Government to estimate the total value of the Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) national obligation at 31 March 2023 and to apportion the total value to each health board (Section 1)
  - inform auditors' evaluation of the role of the Central Legal Office (CLO) as a management expert in respect of the provision for clinical and medical negligence at 31 March 2023 (Section 2 and Appendices).

## Context

2. Health boards may have legal claims in respect of clinical and medical negligence that have not been settled by 31 March 2023. Boards were notified of the progress of all such claims by the CLO under the CNORIS in April 2023. The CLO categorised the level of risk relating to the settlement of each claim. This is intended to inform the judgement of boards as to whether to recognise a provision for each claim or disclose a contingent liability.

3. CNORIS is funded by all health boards contributing a share of the total value of the national obligation. Boards are required to recognise a provision for their expected contribution in line with information provided by the Scottish Government in April 2023.

4. This report satisfies the commitment in Technical Guidance Note 2023/1 ([Module 13](#)) which advised auditors that Professional Support would undertake reviews:

- to evaluate the appropriateness of the methodology adopted by the Scottish Government to estimate the total national obligation for CNORIS as at 31 March 2023
- of the work carried out by the CLO during 2022/23 relating to CNORIS.

## Consulting with Professional Support

5. Auditors should contact Professional Support with any enquiries or requests for advice by sending an email to [TechnicalQueries@audit-scotland.gov.uk](mailto:TechnicalQueries@audit-scotland.gov.uk).

# 1. Methodology for national obligation

## Reasonableness of methodology

### Key finding

**6.** Professional Support identified that the Scottish Government had adopted a similar simplified methodology for estimating the national CNORIS obligation in 2022/23 as they had in 2020/21 and 2021/22.

**7.** The methodology used the submissions made by each board in March 2023 as the basis for estimating the total obligation and apportioning each board's individual share as at 31 March 2023.

### Conclusion

**8.** Profession Support considers the methodology to be a reasonable approach in the circumstances.

## Application of methodology

### Key findings

**9.** The total national obligation notified to boards by the Scottish Government at 31 March 2023 (with comparatives) is set out in the following table:

Amount of national CNORIS obligation (£000)	As at 31 March 2022	As at 31 March 2023
Clinical & Medical (C&M)	663,784	731,858
Other	65,647	72,379
TOTAL	729,431	804,237

**10.** Each board was notified of the amount of the provision in an email to Directors of Finance dated 14 April 2023. Professional Support confirmed that the proportion of the total obligation allocated to each board, and the apportionment between clinical and non-clinical, was based on a percentage split as notified by the NHS National Services Scotland, which is the scheme manager for CNORIS.

**11.** Professional Support agreed each of the individual board's returns to the Scottish Government spreadsheet used to calculate the national obligation.

**12.** The share of the national obligation for each board is provided at Appendix 1.

**13.** Professional Support has not identified any issues in the application of the methodology by the Scottish Government that require to be brought to auditors' attention.

### **Conclusion**

**14.** Professional Support did not identify any errors in the application of the methodology for allocating the national obligation to health boards.

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## 2. CLO as a management expert

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### Auditor responsibilities for a management expert

**15.** Health boards use the CLO as a management expert. ISA (UK) 500 requires auditors to obtain an understanding of the work undertaken by a management expert, and then evaluate that work to conclude whether it is appropriate as audit evidence.

**16.** The ISA sets out some particular considerations for the auditor, including:

- evaluating the competence, capabilities and objectivity of that expert
- obtaining an understanding of the work of that expert
- evaluating the appropriateness of that expert's work as audit evidence.

### Key findings

**17.** Professional Support evaluated the competence, capabilities, and objectivity of the CLO, and obtained an understanding of the work carried out. The procedures undertaken in the review and the findings from it are set out in detailed working papers at Appendices 2 and 3.

**18.** While the risk and value associated with individual cases is based on judgement there are established processes and procedures in place providing indicators for the CLO to apply an appropriate value and risk rating.

**19.** The report issued by the CLO to boards in April 2023 included all claims received by the CLO by 31 March 2023. Boards are therefore responsible for confirming the existence and impact of any claims received after that date.

### Conclusions

**20.** On the basis of the review, Professional Support considers that the CLO:

- is objective
- has sufficient expertise
- the capability, time and resources to deliver reliable information.

**21.** Professional Support has concluded that it is appropriate for auditors to use the work of the CLO as audit evidence.

**22.** Auditors may want to evaluate:

- the completeness and accuracy of any source data provided to the CLO.
- the reasonableness of estimated values against the actual settlement value.
- the effectiveness of the arrangements that boards have in place for dealing with claims received after 31 March 2023.
- whether the information provided by the CLO is correctly reflected in the annual accounts.

## Appendix 1. Share of national obligation by health board

	A&A		Borders		D&G		Fife		Forth Valley		Grampian	
	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
At 1 April 2022	41,093	4,064	10,126	1,002	11,680	1,155	42,330	4,186	34,470	3,409	51,623	5,106
Arising during year	7,923	859	1,628	164	4,107	718	7,838	804	5,930	384	11,386	1,003
Utilised during year	(3,484)	(378)	(716)	(72)	(1,806)	(316)	(3,447)	(354)	(2,608)	(169)	(5,007)	(441)
<b>At 31 March 2023</b>	<b>45,531</b>	<b>4,545</b>	<b>11,039</b>	<b>1,094</b>	<b>13,981</b>	<b>1,557</b>	<b>46,720</b>	<b>4,637</b>	<b>37,792</b>	<b>3,624</b>	<b>58,002</b>	<b>5,668</b>

	GGC		Highland		Lanarkshire		Lothian		Orkney		Shetland		Tayside	
	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
At 1 April 2022	191,723	18,962	30,039	2,971	74,952	7,413	116,032	11,476	1,082	107	1,532	152	47,643	4,712
Arising during year	28,142	3,306	5,638	496	14,825	717	22,115	1,515	158	26	316	27	8,737	649
Utilised during year	(12,377)	(1,454)	(2,480)	(218)	(6,520)	(315)	(9,726)	(666)	(69)	(12)	(139)	(12)	(3,842)	(285)
<b>At 31 March 2023</b>	<b>207,489</b>	<b>20,814</b>	<b>33,198</b>	<b>3,249</b>	<b>83,257</b>	<b>7,814</b>	<b>128,421</b>	<b>12,324</b>	<b>1,170</b>	<b>122</b>	<b>1,709</b>	<b>167</b>	<b>52,537</b>	<b>5,075</b>



	Western Isles		HIS		PHS		MWC		NES		NHS 24		NSS	
	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
At 1 April 2022	1,148	114	34	3	36	4	33	1	93	9	1,473	146	120	12
Arising during year	231	186	0	16	0	35	0	2	97	97	535	48	12	188
Utilised during year	(102)	(82)	0	(7)	0	(15)	0	(1)	(43)	(43)	(235)	(21)	(5)	(83)
<b>At 31 March 2023</b>	<b>1,278</b>	<b>218</b>	<b>34</b>	<b>12</b>	<b>36</b>	<b>23</b>	<b>33</b>	<b>2</b>	<b>147</b>	<b>64</b>	<b>1,773</b>	<b>172</b>	<b>127</b>	<b>117</b>

	NWTC		SAS		TSH	
	C&M	Other	C&M	Other	C&M	Other
	£'000	£'000	£'000	£'000	£'000	£'000
At 1 April 2022	1,989	197	4,414	437	119	12
Arising during year	1,239	83	644	629	12	63
Utilised during year	(545)	(37)	(283)	(276)	(5)	(28)
<b>At 31 March 2023</b>	<b>2,684</b>	<b>243</b>	<b>4,774</b>	<b>789</b>	<b>126</b>	<b>47</b>

Total	
Clinical & Medical £'000	Other £'000
663,786	65,647
121,512	12,018
(53,441)	(5,285)
<b>731,858</b>	<b>72,379</b>



## Appendix 2. Testing schedule

### Testing Schedule – NHS Central Legal Office, F50 - Using the Work of an Expert

Reference	Procedures / Test of Controls / Tests	Work Performed	Results
1.1	<p><b>Walkthrough</b></p> <p>Document how the system for recording and assessing the value of legal claims against NHS Boards operates and any controls or checks that exist and confirm it operates as described.</p>	<p>A full ISR was completed in 2016/17, followed by walkthroughs in 2017/18 – 2021/22.</p> <p>The 2021/22 walkthrough has been used as a basis to confirm the operation of the system and identify any significant changes from the prior year.</p> <p>I met on MS Teams with Irene Hallet (CNORIS Manager) and Michael Stewart (Head of Litigation, CLO).</p>	<p>There have been no significant changes to the process of assessing legal claims since 2021/22.</p> <p>A walkthrough of the system for processing legal claims was carried out - see <a href="#">walkthrough document</a> for further details.</p> <p><b>Conclusion</b> No issues identified as a result of the walkthrough carried out – the system for assessing legal claims operates as expected. <b>Satisfactory.</b></p>
2.1	<p><b>Understanding</b></p>	<p>Understanding is based on audit</p>	<p><b>Nature, scope and objectives of that expert's work;</b></p>

	<p>Obtain an understanding of the work of the management's expert including the:</p> <ul style="list-style-type: none"> <li>• nature, scope and objectives of that expert's work;</li> <li>• respective roles and responsibilities of management and that expert; and</li> <li>• nature, timing and extent of communication between management and expert, including any report provided by that expert.</li> </ul>	<p>knowledge and experience from prior years, email discussion with CLO officers and a system walkthrough undertaken remotely.</p>	<p>The CLO provides legal advice and representation to the NHS in relation to clinical negligence and other claims. The CLO provides Boards with a report which includes a summary of current claims, outstanding claims from previous years, claims settled in the current year and those closed other than settled. This is supported by a detailed listing of each claim which details the Risk Factor, Estimate of Award, Adverse Expenses, CLO fees, settlement date, among others.</p> <p><b>Respective roles and responsibilities of management and that expert;</b></p> <p>Health boards rely on the information from the CLO to make the necessary provisions and disclosures in their accounts. Per the 2021/22 Manual for the Annual Report and Accounts of NHS Boards, boards are expected to provide in full for claims assessed by CLO as “Category 3,” provide for 50% of the claim for those in ‘Category 2’ and not provide for those in ‘Category 1’. The balance of the value of claims not provided for should be disclosed as a contingent liability. Claims should be shown gross of the related debtor.</p> <p>As explained in the NHS Boards Accounts Manual, Health boards also participate in the CNORIS scheme. The scheme allows for risk pooling of legal claims in relation to clinical negligence and other risks and works in a similar manner to an insurance scheme. Participants (health boards) contribute to the CNORIS pool each financial year at a pre-agreed contribution rate based on the risks associated with their individual NHS board. As a result of this participation, boards should also recognise that they will be required</p>
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			<p>to make contributions to the scheme in future years. Therefore, a provision that recognises the health board's share of the total CNORIS liability of NHS Scotland is made and will be provided by SGHSCD based on information provided by the boards. Boards are required to submit information in respect of the claims against them as at 31 March with their Month 12 financial performance return. The SGHSCD will then calculate each board's share of the total provision by end of April.</p> <p>The information provided by the CLO is therefore crucial in arriving at an accurate distribution rate for each board.</p> <p><b>Nature, timing and extent of communication between management and expert, including any report provided by that expert.</b></p> <p>CLO reports are provided to health boards on a quarterly basis and some large boards require monthly reports. The last quarter's report covering January – March is normally provided in the middle of April. This will include all claims received by CLO as at 31 March. This means that any claims received by CLO post 31 March are not captured in the report and it is up to the individual boards to gather, review and consider the impact of these late claims on their financial statements. Auditors should obtain and review this information and make a judgement on the robustness of the process taken to ensure the information is complete and accurate and that the adjustments have been made to the financial statements where appropriate.</p> <p><b>Conclusion</b></p>
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			<p>No issues identified in relation to understanding the CLO's role in determining provisions in relation to legal claims. The roles of the CLO and Health Boards are well established and there have been no major concerns identified in relation to this. <b>Satisfactory.</b></p>
<p>3.1</p>	<p><b>Reliability</b>  Assess the reliability of information provided by the management expert. Consider:</p> <ul style="list-style-type: none"> <li>• the nature and complexity of the matter</li> <li>• the risks of material misstatement in the matter</li> <li>• the availability of alternative sources of information</li> <li>• the nature, scope and objectives of the management's expert's work</li> <li>• whether the expert is employed by the entity, or is a party engaged by it</li> <li>• extent to which management can exercise control or influence</li> <li>• whether the expert is subject to technical performance standards or professional / industry requirements</li> </ul>	<p>Met with Michael Stewart via MS Teams.</p> <p>Considered prior year audit knowledge and reviewed information on CLO's website and other documentation.</p>	<p><b>Nature and complexity of the matter</b></p> <p>The role of the CLO in terms of CNORIS disclosures in NHS Board accounts is to assess the risk of settlement and approximate value of legal cases against NHS Boards.</p> <p>While the risk associated with a case is judgemental there are established processes and procedures in place and there are indicators solicitors use to identify risk. For example, an ongoing court case being contested by the CLO would usually be assessed as a 2; where liability has been accepted but the settlement is being negotiated the risk will be a 3.</p> <p>Valuations have been discussed with Michael Stewart, Head of Litigation, and he advised then that this is based on previous judgements adjusted for the factors of the case. For example, in the case of a deceased patient there is a relatively set amount awarded to each relative depending on their relationship with the deceased person.</p> <p>Overall, given the experience and expertise of CLO solicitors working on cases the work performed by CLO is of relatively low complexity.</p> <p><b>The risks of material misstatement in the matter</b></p> <p>Whether the CNORIS provision is material will vary between boards but for most it will be a material balance. The total provision included in the</p>

	<ul style="list-style-type: none"> <li>• nature and extent of controls within the entity over the expert's work</li> <li>• auditor's knowledge and experience of the expert's field of expertise</li> <li>• auditor's previous experience of the work of that expert.</li> </ul>		<p>Scottish Government Consolidated Accounts in 2021/22 was £901m (£817m 2020/21).</p> <p>As the balance at national and individual board level is made up of multiple cases (CLO case load in is approximately 1500 cases) the risk of material misstatement is reduced as multiple cases would have to be inaccurate to make a material difference. However, given that some cases can have very high estimated values (e.g. maternity cases can often have estimates of c£20m) there is a risk of material misstatement associated with the estimates provided by CLO.</p> <p><b>The availability of alternative sources of information</b></p> <p>Given the nature of the work performed by CLO (they are the sole providers of legal advice to NHS Boards in relation to clinical negligence claims against them) there are no alternative sources of information.</p> <p><b>Whether the expert is employed by the entity, or is a party engaged by it</b></p> <p>The role and status of CLO is somewhat unusual compared to other management experts. The CLO is headed up by Jennifer Thomson. Jennifer took over this position during 2022/23 following the departure of Norma Shippin. Her duties include the role of Legal Adviser to NHS Scotland which has a formal status in litigation, acting as the official link between the NHS and the court system. The National Health Service (Scotland) Act 1978 provides the legal basis for the existing functions of the Central Legal Office (CLO) which is a Service within the NHS National Services Scotland (NSS). The CLO is therefore independent of NHS boards. While it is part of NSS, it is a separate and distinct unit from the rest of NSS.</p>
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			<p>Moreover, generally, NSS's own claims do not involve large sums compared with those of the health boards.</p> <p><b>Extent to which management can control or influence</b></p> <p>As discussed above, the CLO are independent of Boards. Michael Stewart confirmed that there are no issues with Health Boards trying to influence the estimates and risk ratings for cases as they are progressed. If this were to occur, it would be taken very seriously, and no changes would be made to estimates etc.</p> <p>In previous years the role in relation to representing NSS was discussed. We were advised that whilst NSS management is interested in CLO performance overall, they take no role in the legal work undertaken by CLO other than the normal client/ solicitor relationship.</p> <p>The CLO do interact with Health boards and the Scottish Government and take instructions from them when a settlement is proposed. Boards must approve all settlements and the SG have to approve all settlements over £250,000 for clinical cases or £100,000 for non-clinical cases.</p> <p><b>Whether the expert is subject to technical performance standards or professional / industry requirements</b></p> <p>As per the CLO <a href="#">website</a>, and the Law Society of Scotland <a href="#">website</a>, the CLO employs 77 solicitors, of whom 44 are Litigation solicitors. Each solicitor is a member of the Law Society of Scotland and is bound by the Society's code of professional ethics.</p>
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			<p>The only time the Law Society would inspect cases is if there have been complaints made against a solicitor. Michael confirmed that to the best of his knowledge, no CLO solicitor has ever been disciplined by the Law Society of Scotland.</p> <p>The CLO operates a system of internal Quality Assurance (QA) checks. Team leaders perform QAs on their team member's files while the Head of Litigation reviews the Team Leaders' files including the ones of the Director of CLO. Sample claims for QAs are selected by the fee charger who is independent of the litigation teams.</p> <p>There is no system of external quality checks. This is something they have considered but given the nature and experience of the CLO it is not felt external review from a firm of solicitors would be appropriate as they would not have the expertise of the CLO. External review has been discussed with the CLO's English equivalent, NHS Resolution and they have similar arrangements, although much of their work is undertaken by external solicitors, rather than in-house. Michael advised that the CLO solicitors will at times take advice from counsel (usually in high value cases) which provide additional assurance around judgements, however this would not constitute an external quality check. Given the nature of the CLO this is considered reasonable.</p> <p>The Litigation department holds monthly meetings and the standard agenda includes updates from teams including discussion of individual cases, training provided and received, experts and counsel and other business Once a quarter the meeting is focussed</p>
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			<p>on discussing complex cases and providing advice to allow a deeper dive into these issues. (see <a href="#">WT-12</a> minutes of litigation meeting). Team leaders provide guidance and support to the members of their team and individual cases are discussed among solicitors on an informal basis. Key performance indicators covering claims are also produced at varying intervals (see <a href="#">WT-11</a> KPI report).</p> <p><b>Nature and extent of controls within the entity over the expert's work</b></p> <p>As discussed above the CLO is independent from NHS Boards and Boards have limited influence and control over the legal work they carry out on their behalf. Boards do have a role in agreeing to any settlements which would be expected in a normal solicitor/ client relationship.</p> <p><b>Auditor's knowledge and experience of the expert's field of expertise</b></p> <p>Auditors will have limited understanding of how a legal case should be run and what the likelihood of settlement and estimated value of settle would be. However, CNORIS is a well-established scheme, and all Boards participate in the scheme. Therefore, in general, there is a good understanding by Board auditors of how the scheme operates and how it is used to inform the provisions in relation to negligence within Board accounts.</p> <p><b>Auditor's previous experience of the work of that expert.</b></p> <p>The CLO has many years of specialist knowledge and experience in the public sector setting. Based on our audit knowledge, there have</p>
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			<p>never been any serious concerns raised about the work of the CLO by NHS Board auditors.</p> <p><b>Conclusion</b></p> <p>No concerns have been identified regarding the reliability of the CLO as a management expert. The CLO is well established and independent from Boards and all solicitors are regulated by the law society. <b>Satisfactory.</b></p>
4.1	<p><b>Professional Competence, Capability and Objectivity</b></p> <p>Assess the professional competence, capability and objectivity of the expert including the expert's qualifications, availability of resources to carry out the work and any potential conflicts of interest</p>	As above	<p><b>Competence</b></p> <p>As stated above all solicitors are members of the law society and no solicitor has ever been disciplined by the law society. The CLO are well established and have a unique role in providing legal advice to NHS Boards. The CLO has some highly experienced solicitors, several with over 30 years' experience.</p> <p>Michael Stewart confirmed that in as of May 2023, 14 CLO solicitors had accreditation from the Law Society as specialists in clinical negligence, and 1 further solicitor with accreditation pending. There is also 1 accredited Personal Injury Lawyer. Michael Stewart and another team leader are members of court working groups to discuss development of rules and process for managing hearings.</p> <p>National and local seminars and training courses are presented by specialist solicitors from across its Litigation, Employment, Commercial and Property departments, and specialist groups.</p>

			<p>As recognised experts in their field, the CLO solicitors are also regularly invited to speak at other conferences and events.</p> <p>The Litigation department is organised into 4 geographical teams and each area team is composed of a team leader, 8 – 10 solicitors, the majority of which are senior solicitors, 1-2 legal executives and a personal assistant.</p> <p>Due to its fee charging ability (based on actual time and costs incurred), the CLO is able to recruit the number of solicitors it requires as long as it is able to recover its costs. The CLO is not allowed to make profit.</p> <p>The total number of solicitors has grown over the past 30 years. There are 77 solicitors working for the CLO in 2022/23 (per the Law Society of Scotland's website). This reflects the increase in volume, complexity and pressures from Courts requirements. Unlike most public bodies, the CLO has not had to make cutbacks in staffing.</p> <p>The CLO has little problem recruiting solicitors when required, the work life balance and support they can offer is very attractive to solicitors. The CLO use QAs and other checks such as those carried out by the CNORIS manager to monitor caseload and will assign cases to other solicitors if they feel one solicitors' caseload is too high.</p> <p><b>Capability</b></p> <p>The CLO has a case management system which records the details and progress of each claim. An individual solicitor is responsible for the administration of each claim. The estimate of the potential valuation settlement will be made by the solicitor administering the</p>
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			<p>claim based on experience, nature and complexity of case and information available. This will be discussed and reviewed by the team leader. Expert opinion from doctors, engineers, actuaries, etc. is also sought if required to arrive at estimates for potential liabilities. The Senior Counsel is also a good source of expertise and provides an important check and balance.</p> <p>There is a CNORIS manager with responsibilities for ensuring the completeness of claim information and reporting regularly to NHS Boards and the Scottish Government.</p> <p>On monthly basis, the CNORIS Manager pulls together all high value claims and claims with risk factors 2 and 3 and sends the reports to the CLO Director and the three Litigation Team leaders for review before forwarding them to the SG.</p> <p>Based on the CLO Customer Survey for 2022/23 the overall CLO customer satisfaction rating was 99% (see <a href="#">WT-13</a>)</p> <p>As discussed above Boards have very little influence over the work of CLO solicitors which enables them to manage cases as they see fit and the experience of the CLO means they are well placed to do this. Boards may push back on recommendations from the CLO but it is the role of the CLO to justify and explain their conclusions, rather than be influenced.</p> <p><b>Objectivity</b></p> <p>The CLO is not employed by NHS boards and performs independently of NHS NSS. Management has no real basis to</p>
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			<p>influence a case as they don't have the necessary information and expertise to do so.</p> <p>As also mentioned above, management at boards and the Scottish Government have a role in discussing the actual settlement with the CLO, as expected. These instances however do not have a direct bearing on the assessment of the risk and award by CLO in terms of the information we use as audit evidence.</p> <p>CLO takes advice from other experts such as actuaries, engineers, doctors, etc. to arrive at schedule of damages. Where counsel (a barrister) is involved in a case they give their own valuation and this provides an important check and balance.</p> <p>If a case has some degree of personal connection with a solicitor, this is re-allocated to another solicitor and there is a section on prescient to record any conflicts of interest. Failure to adhere to this would be a breach of CLO policy and of Law Society regulations</p> <p><b>Conclusion</b></p> <p>No issues relating to professional competence, capability and objectivity have been identified. CLO solicitors are regulated by the law society and there are no issues with capacity. The CLO is independent from NHS Boards and they do not exert undue influence on the CLO. <b>Satisfactory.</b></p>
5.1	<p><b>Relevance and reasonableness</b></p> <p>Assess the relevance and reasonableness of the expert's work as audit evidence and determine</p>	<p>Conducted virtual meetings with Michael Stewart and</p>	<p>The information provided by the CLO is relevant and reasonable as audit evidence in support of Clinical Negligence claims provision and corresponding Debtor and disclosures in the health board's</p>

	<p>whether it is properly reflected in the financial statements including:</p> <ul style="list-style-type: none"> <li>• the relevance and reasonableness of that expert's findings or conclusions, their consistency with other audit evidence, and whether they have been appropriately reflected in the financial statements;</li> <li>• if that expert's work involves use of significant assumptions and methods, the relevance and reasonableness of those assumptions and methods; and</li> <li>• if that expert's work involves significant use of source data the relevance, completeness, and accuracy of that source data.</li> </ul>	<p>Irene Hallet via MS Teams</p> <p>Reviewed a sample of two CLO files – one of which resulted in a settlement and one which did not.</p>	<p>accounts and as basis for calculating their share in the CNORIS liability pool.</p> <p>The CLO uses their acquired experience and expertise in making their assessments of the risk factors and likely settlement awards. The CLO have access to other experts and senior counsel to provide further expertise and challenge in certain cases.</p> <p>The CLO has a case management system which is subject to checks to ensure it produces accurate and reliable reports provided to health boards and Scottish Government.</p> <p>The CLO Director and Team leaders provide supervision and guidance and conduct quality assurance checks over the work of individual solicitors. The Litigation teams are predominantly composed of senior solicitors.</p> <p>We reviewed a sample of two claims this year one of which had resulted in a settlement and one which did not. Michael Steward talked through each page on the prescient system which documents the findings/judgements made by the solicitors. We did not identify any issues with the relevance and reasonableness of the CLO's findings or approach. The <a href="#">walkthrough</a> performed this year provides us with assurance that there have been no significant changes to CLO processes.</p> <p><b>Conclusion</b></p> <p>No issues identified. Based on assurance gained from our Walkthrough of the CLO's approach, and detailed review of two cases I am satisfied that the information provided to Boards by the</p>
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			CLO is relevant and reliable and a reasonable basis to calculate provisions in relation to legal claims. <b>Satisfactory.</b>
6.1	<b>Programme Improvements</b>  Identify any improvements /amendments/additions to the programme for consideration by Professional Support.		None identified.

	<b>Name</b>	<b>Date</b>
Prepared by	Amber Tomlinson	09/05/2023
Reviewed by	Neil Cameron	10/05/23



## Appendix 3. Walkthrough

### Walkthrough

### Walkthrough

<b>Client</b>	<b>Central Legal Office</b>
<b>Financial year</b>	<b>2022/23</b>
<b>System</b>	<b>Reliance on an expert</b>

		<b>CONTROL IDENTIFIED</b>
	<b>Description of Process</b>	<b>YES/NO/n/a</b>
1.	<p>Note – CLO walkthrough undertaken via Microsoft Teams discussions.</p> <p>Details of claims normally come to the CLO via Health Boards this may be via the board HQ or a specific hospital. There is a protocol that any Board which receives a legal claim passes this on to the CLO. Michael Stewart (Head of Litigation) advised that there is the possibility of delay of cases being passed on to CLO from Health Boards, however the claimant solicitor would follow up on cases, so there is no real risk that cases are missed altogether. Sometimes claims come direct to the CLO - often this is where they are close to being time barred (claims usually need to be made within 3 years for adults and by the age of 19 for children). Michael advised that they encourage claims to be sent directly to the CLO as this makes the process much quicker, by bypassing the Health Board. Approximately 95% of claims will be submitted by a solicitor, but some do come directly from the claimant.</p> <p>Sometimes solicitors will write advising they are looking into the details of a case and asking for further information but they are not actually making a claim at this stage. Sometimes at this stage it is not clear if this will become a case or not. There are two options here – to open a case in the system or to hold the information in the general database held by CLO, but not open a case at that stage. There is no difference to outcomes, the difference just lies in how the information is recorded.</p>	n/a

	<p>Once a claim is received by the CLO Registry Department it is stamped with date received and the Registry Department inputs the basic information such as claimant's name, client hospital, work type (e.g. medical claim), date case was opened (i.e., date it was registered), date of incident, specialty (e.g. Obstetrics), etc. on Prescient (the electronic Case Management System used by CLO) – see <a href="#">WT-01</a> for screenshots of the financial and CNORIS tabs of Prescient which hold the most relevant details in relation to value and risk assessment of the claim. A unique reference number is assigned to the case.</p>	
2.	<p>The Registry Department do not have the expertise to assign estimates and risks to cases, so a risk factor of 1 and an estimate of £1 are entered onto the system initially, before being revised by the solicitor assigned to the case.</p>	n/a
3.	<p>The Registry Department assigns the case a litigation team, and the litigation team leader will then assign the case to a solicitor. The litigation teams are arranged geographically to cover north, south, east and west regions. One or two solicitors could be assigned to a case depending on the nature of the case. The Solicitor will amend the risk factor, estimate and estimated settlement date as appropriate when circumstances and evidence surrounding the case become clearer and available. Risk factors maybe be 1, 2 (if litigation has been started) or 3 (if a hospital investigation/expert report has taken place and this shows that there would be no defence).</p> <p>Once the case has been assigned to a solicitor they are sent an email to advise them of this.</p> <p>There are no time limits given to solicitors to review a case and assign an estimate and risk factor – this is because every case is different, and the CLO has no control over the timing of many aspects of the process e.g. timing of reports from experts/awaiting information form claimant solicitors etc. The CLO encourages their solicitors to work through cases as quickly/efficiently as possible.</p> <p>Irene Hallett, CNORIS manager, checks estimates on cases regularly. Estimates which have not been revised by solicitors are marked as unconfirmed and if this is the case Irene encourages solicitors to update cases. See <a href="#">WT-02</a> for emails from Irene reminding solicitors of the importance of updating details. <a href="#">WT-03</a> is a spreadsheet used by Irene for reviewing claims and quering details with solicitors.</p>	Yes
4.	<p>Since 23 March 2020, litigation claims files have converted to digital-only files. The file is opened by the Registry team on prescient (as described above) but no hard copy file is created as in the past.</p> <p>The solicitor will receive an e-mail notification that the file is open, and they then deal with and progress the case. They will update Prescient with information received including estimated award, risk of settlement factor, estimated settlement date (see <a href="#">WT-01</a>). In order to ensure that progress on the case is easy to follow for any solicitor who requires to cover the case while the primary solicitor is on leave, there is a Case Progress document at the head of the electronic document register which sets out details of where the case currently sits (<a href="#">WT-04</a>)</p>	Yes

	<p>As the solicitor works through the file they will set review dates, which serve almost as a reminder for the solicitor to go back and add updates, follow up on information etc. Michael explained that each case should always have a future review date (unless it has been closed) and this ensures that the cases are all progressing. The registry team will e-mail the solicitor to alert them to the review date when it arises. In addition, there is a review of files on a quarterly basis to check that all claims files have a future review date. If any file has no review date, Irene Hallett will contact the solicitor to alert them to that fact.</p> <p>The importance of updating cases regularly and the importance of this in relation to CNORIS is stressed in guidance notes issued to solicitors. (see <a href="#">WT-05a</a> especially last paragraph in bold). There is also detailed Litigation department guidance (<a href="#">WT-05b</a>).</p>	
5.	Prescient can only show the current and the last previous estimated risk factor and award. It does not hold history of all the changes made to these fields.	
6.	Once a claim has been closed and settled, the file is passed on to the CNORIS Manager, Irene Hallett. Irene reviews the file and carried out number of clerical checks i.e. ensuring completeness and consistency of information entered in Prescient and that the right boxes have been ticked properly. Irene used to document this in a paper checklist however she stopped this when the CLO moved away from paper files during COVID. She now carries out the same checks from knowledge but doesn't document this in the checklist. Once Irene has carried out her review she adds a 'Y' to the CNORIS review completed box in the prescient system so show that her review has been completed. This was viewed on Irene's system via screenshare on Teams and can be seen in the attached screenshot of the CNORIS page ( <a href="#">WT-01</a> ) Irene also writes to the health board if settlement award is more than £25k. Claims below £25k are outwith the scope of CNORIS.	Yes
7.	Irene Hallett also conducts various other data checks on open files – she does not review any of the legal information but rather checks the administrative side of the cases. See <a href="#">WT-06</a> for a list of checks carried out by Irene and a screenshot of the modules in the Prescient system which shows each check. Irene carries this out at least monthly but will do checks more frequently if time allows.	Yes
8.	<p>Irene Hallett sends out quarterly Claims Report to each health board (for some large HBs this is done monthly) which provides a summary of current claims, outstanding from previous years, settled in current FY and closed other than settled. The claims report includes a detailed listing of each claim which details the Risk Factor, Estimate of Award, Adverse Expenses, CLO fees, settlement date, among others. See <a href="#">WT-07</a> for a sample report (note that case details have been redacted). A similar report is used by boards as basis for their clinical negligence claims provision at year-end.</p> <p>Reports are sent to solicitors before they are issued, and solicitors are encouraged to check all the information is up to date and update if not. The CLO are aware of the importance of the Q4 report in relation to CNORIS and extra effort is made to ensure this is as accurate as possible.</p>	Yes

9.	Irene Hallett also sends monthly High Value (>£1.0m) and Category Reports (all open Medical / Nursing claims that are rated either risk 2 or 3 and that are estimated to settle within 3 years) to the SG. She sends these reports first to the CLO Director and the Litigation Team Leaders for review prior to sending it to the SG. See <a href="#">WT-08a</a> and <a href="#">WT-08b</a> for example of the category reports (NB claim details redacted).	Yes
10.	The CLO sends various reports to a financial analyst in NSS who works in collaboration with SG to inform the CNORIS pool calculation which takes into account risk profile, estimate, timescale and forecast when the boards are likely to reclaim. See <a href="#">WT-09</a> – Q3 2022/23 Forecast. The CLO also holds a monthly meeting with the financial analyst and Irene to discuss high value cases, provide opinions on these and give a steer on the likely settlement amounts. This allows the assumptions used in the CNORIS calculation to be more nuanced.	Yes
11.	Nicole Millar, Fee Charger, who is independent of the Litigation teams, selects cases for quality assurance checks. Cases are selected each month for QA checks – one month this will be cases with a large amount of time charged, and the following month it will be cases with small amounts of time charged. All solicitors who carry out case work have their files reviewed. This includes team leaders and will include Jennifer Thomson when she begins to pick up cases. Nicole maintains a listing of QAS checks done (see <a href="#">WT-10a</a> ) to ensure sufficient coverage of each solicitor. An example of one of the QA checks has been reviewed. (see <a href="#">WT-10b</a> ).	Yes
12.	KPI's are also produced by the CLO e.g. from receipt of claim to giving advice should be within a 12 month time period (excluding children's cases which are not time barred until the child reaches 19 years old). (see <a href="#">WT-11</a> )	Yes

Completed by: Amber Tomlinson	09/05/2023
Reviewed by: Neil Cameron	10/05/2023

# Auditor Assurance 2021/22

## Clinical Negligence and Other Risks Indemnity Scheme

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